

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO. 283 OF 2006
IN
CRIMINAL WRIT PETITION NO. 3147 OF 2005

Ashok Uttamrao Kakade

..Petitioner

Vs.

The State of Maharashtra and Ors.

..Respondents

Mr. D.S. Chandnani
Mr. S.R. Borulkar, P.P. with Mrs. A.S. Pai, APP
for State.

for petitioner.

**CORAM: B.H. MARLAPALLE &
SMT.ROSHAN S. DALVI,JJ.**

Date of Reserve : October 13, 2006.

Date of Pronouncement: November 14, 2006.

P.C.:

1. This criminal application is filed claiming
for review of our order dated 31/1/2006 passed in
Criminal Writ Petition No.3147 of 2005 and by the said
order the petition was rejected summarily.

2. The substantial prayers in Criminal Writ
Petition No. 3147 of 2005 read as under:-

23rd and 25th June 2004, Exhibits D, E, hereto, the two statements dated 28th June and 7th July 2005, Exhibits K and L hereto, the impugned sanction order, dated 14th November, 2005, the impugned chargesheet dated 15th Nov. 2005, I and J hereto, since they do not disclose any offence whatsoever for which the petitioner could be prosecuted;

and to declare that the statements dated 28th June 7th July 2005, Exhibit K and L hereto are forged/fabricated and as such none of respondent can take any action on the basis thereof;"

3. In our order under review, we noted in para 2 as under:-

"2. The Assistant Commissioner of Anti Corruption Bureau, Mumbai unit has filed affidavit in reply in Criminal Application No.6518 of 2005 and alongwith the same copies of the sanction order dated 14th November 2005 and the chargesheet dated 15th November, 2005 have been placed on record. The sanction order has been passed by the Respondent No.5. The petitioner was at the relevant time working as the Police Inspector at Kapurbawdi Police Station under the Thane Police Commissionerate and the sanction order dated 14th November, 2005 sets out the details, the allegations of the illegal gratifications/demand of money as well as receipt. Once the chargesheet has been filed before the Special Court, the merit of the allegations/charges against the petitioner will have to be gone into by the said Court and it cannot be said at this stage that there is no prima facie case against the petitioner to proceed against him under the Prevention of

Corruption Act, 1988."

. The said order came to be challenged in a Special Leave Petition before the Supreme Court and it was dismissed on 10/7/2006 in terms of the following order:-

". The matter was argued at length by the learned counsel for the petitioner. Later, the learned counsel seeks permission to withdraw the Special Leave Petition with liberty to move the High Court for filing a review. Permission is granted. The Special Leave Petition is accordingly dismissed as withdrawn."

4. In this review petition, after setting out the factual matrix, in paras 10 to 12 the review petitioner has averred as under:-

"10. The petitioner says that it would not be out of place to mention here that under Rule 5 of Bombay Police (Punishments and Appeals) Rules, 1956, framed under the Bombay Police Act, it is respondent No.6 who alone can grant sanction to prosecute the petitioner and respondent No.5 is not conferred any power to grant any sanction, either as done by him vide order dated 14th Nov. 2005, Exhibit I to the aforementioned petition or otherwise. To show that respondent No.6 is authority competent to appoint him and as such competent to remove him, the petitioner craves leave to annex to this petition relevant entry in his service book showing that respondent No.6 appointed him as Senior Inspector and as such

competent to grant sanction, which is hereto annexed and marked Exhibit D to this petition.

11. The fact that said respondent suppressed/concealed the aforementioned fact, though challenged by petitioner in aforementioned petition, which renders said respondents guilty of interfering with administration of justice, which constitutes Contempt under Section 2(c) of the Contempt of Courts Act.

12. In the premises, the petitioner says that he is entitled to reliefs, as prayed herein and humbly prays for the same."

5. We, therefore, called upon the State authorities to explain whether respondent no.5 i.e. Commissioner of Police, Thane is the competent authority to grant sanction as required under Section 19 of the Prevention of Corruption Act, 1988 (for short "the Act"). Accordingly, affidavit in reply has been filed, in which it has been stated that Section 25 of the Bombay Police Act, 1951 empowers the Special Inspector General of Police i.e. the Joint Commissioner of Police to deal with the subordinate officers of the rank of Inspector of Police and, therefore, the Commissioner of Police, Thane is competent to accord sanction as required under Section 19 of the Act.

6. By filing an affidavit in rejoinder, the petitioner placed before us a copy of the Government Resolution dated 3/4/2000 as well as the subsequent Government Resolution dated 26/2/2004 and by referring to the same, it was contended by the learned counsel for the petitioner that it is the State Government alone who could accord sanction as required under Section 19 of the Act, though in the review petition it has been contended that it was respondent no.6 i.e. Director General of Police, Maharashtra State is the competent authority to accord the said sanction.

7. Thus, the only issue which was required to be considered in this review petition is whether the respondent No.5 was the competent authority to accord sanction under Section 19 of the Act which reads as under:-

prosecution.-	"19.	Previous	sanction	necessary	for
cognizance	(1)	No	court	shall	take
sections	of	an	offence	punishable	under
been	7, 10,	11, 13	and 15	alleged	to have
with	committed	by a	public	servant,	except
	the		previous		sanction.-

(a) in the case of a person who is employed in connection with the affairs of the Union and is not

removable from his office save by or
with the sanction of the Central
Government, of that Government.

(b) in the case of a person who is
employed in connection with the
affairs of a State and is not
removable from his office save by or
with the sanction of the State
Government, of that Government;

(c) in the case of any other person,
of the authority competent to remove
him from his office.

(2) Where for any reason whatsoever any doubt
arises as to whether the previous sanction as
required under sub-section (1) should be given
by the Central Government or the State
Government or any other authority, such
sanction shall be given by that Government or
authority which would have been competent to
remove the public servant from his office at
the time when the offence was alleged to have
been committed.

(3) Notwithstanding anything contained in the
Code of Criminal Procedure, 1973 (2 of 1974),-

(a) no finding, sentence or order
passed by a special Judge shall be
reversed or altered by a court in
appeal, confirmation or revision on
the ground of the absence of, or any
error, omission or irregularity in,
the sanction required under
sub-section (1), unless in the opinion
of that court, a failure of justice
has in fact been occasioned thereby;

(b) no court shall stay the
proceedings under this Act on the
ground of any error, omission or
irregularity in the sanction granted
by the authority, unless it is
satisfied that such error, omission or
irregularity has resulted in a failure

of justice;

(c) no court shall stay the proceedings under this Act on any other ground and no court shall exercise the powers of revision in relation to any interlocutory order passed in any inquiry, trial, appeal or other proceedings.

(4) In determining under sub-section (3) whether the absence of, or any error, omission or irregularity in, such sanction has occasioned or resulted in a failure of justice the court shall have regard to the fact whether the objection could and should have been raised at any earlier stage in the proceedings.

Explanation.-For the purpose of this section-

(a) error includes competency of the authority to grant sanction;

(b) a sanction required for prosecution includes reference to any requirement that the prosecution shall be at the instance of a specified authority or with the sanction of a specified person or any requirement of a similar nature."

. We are concerned with the requirements of

Section 19(1)(c). The respondent no.5 has filed his affidavit before us and stated that while he was holding the post of Commissioner of Police, Nagpur City since May 2004 he was in the rank of Additional Director General of Police and on his transfer since 11/2/2005 as the Commissioner of Police, Thane City,

he continues to be in the very same rank i.e. the Additional Director General of Police. In para 4 of his affidavit, the respondent no.5 has stated that as per the provisions of Section 19(1)(c) of the Prevention of Corruption Act, 1988 read with Article 311 of the Constitution of India, the authority competent to dismiss or remove a member of the State service is the authority who has appointed such member in service and consequently authority competent to grant sanction under Section 19(1)(c) of the said Act. In the instant case the petitioner was appointed by way of promotion to the post of Police Inspector by the Additional Director General of Police and hence any officer of the rank of Additional Director General of Police can accord sanction as required under Section 19 of the Act. We have seen from the record produced before us that the Commissioner of Police, Thane City was of the rank of Special Inspector General of Police initially and the said post has been upgraded to the rank of Additional Director General of Police vide Government Resolution dated 18/2/1999. It is also seen from the record that the petitioner was promoted to the post of Police Inspector vide order dated 5/12/1999 passed by the Additional Director

General of Police. Section 12A of the Bombay Police Act, 1951 states that subject to the general or special orders of the State Government the Commissioner for the area for which he is appointed and the Director General and Inspector General for other areas shall appoint Inspectors. The learned Public Prosecutor has placed before us a copy of the dismissal order dated 22/7/2005 passed by the Commissioner of Police, Mumbai City who is in the rank of Additional Director General of Police and by the said order Mr. Aslam Shamsuddin Momin, Police Inspector, posted in Crime Detection Branch has been dismissed from service. Undoubtedly, the Commissioner of Police, Mumbai City and the Commissioner of Police, Thane City are both the officers of the same rank i.e. Additional Director General of Police and they have the powers to pass the orders of removal from service of the officers of the rank of Police Inspector and thus the authority competent to remove such officers from service.

8. We are, therefore, satisfied that the GRs relied upon by the petitioner and as referred to hereinabove are not applicable in the instant case and

that respondent no.5 is the competent authority to
accord sanction under Section 19(1)(c) of the Act.

9. The learned counsel for the petitioner urged
before us to enlarge the scope of this review petition
to reconsider all the issues/grounds raised in the
main petition and in support of these contentions he
submitted that he has been granted liberty by the Apex
Court to re-agitate all the grounds raised in the
original petition. Having regard to the order passed
by the Apex Court and as reproduced hereinabove, it is
clear that the petitioner was granted permission to
withdraw the SLP and the same was dismissed as
withdrawn. The same order cannot be read to suggest
that all the issues raised in the main petition are
required to be reconsidered in this review petition.
We, therefore, restricted our reconsiderations in the
review petition only on the issue as to whether the
respondent no.5 was the competent officer to accord
sanction under Section 19 of the Act and we have
recorded our finding in the affirmative.

10. Hence, there is no case made out to review our
order dated 31/1/2006 by which Criminal Writ Petition

No.3147 of 2005 was rejected summarily and consequently this review petition is hereby rejected.

(Roshan S. Dalvi,J.)

(B.H. Marlapalle,J.)